

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 North 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Solomon Corporation
103 West Main
Solomon, Kansas

Respondent

) Docket No. TSCA-07-2003-0179
)
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
)
)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated federal regulations addressing the manufacture, processing, use, distribution in commerce, disposal, storage, marking and notification, and manifesting of polychlorinated biphenyls (PCBs), 40 C.F.R. Part 761, promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and thereby has violated Section 15(1) of TSCA, 15 U.S.C. § 2614.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Administrator of EPA Region VII is the Director of the Air, RCRA and Toxics Division, EPA, Region VII.
4. The Respondent is Solomon Corporation located at 103 West Main Street, Solomon, Kansas 67480. Respondent repairs and markets electrical transformers and regulators. As part of Respondent's business, Respondent removes PCB containing oil from transformers. Respondent is a corporation that was incorporated in and does business in the State of Kansas.

Statutory and Regulatory Background

5. Section 6(e) of TSCA, 15 U.S.C. § 2605(e) requires in part that the Administrator promulgate rules prescribing the methods of disposal, use, manufacture, processing, distribution in commerce and use of PCBs. These regulations are set forth in 40 C.F.R. Part 761.

6. Definitions are set forth in 40 C.F.R. § 761.3. "Commercial storer of PCB waste" is defined in part as the owner or operator of each facility who engages in storage activities involving PCB wastes generated by others. If a facility's storage of PCB waste generated by others at no time exceeds a total of 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste.

7. Pursuant to 40 C.F.R. § 761.3, "PCB-Contaminated" is defined in part as a liquid material containing PCBs at concentrations of greater than or equal to 50 ppm and less than 500 ppm.

Section III

Violations

8. The Complainant hereby states and alleges that Respondent has violated federal regulations promulgated pursuant to TSCA, as follows:

Count I

9. Respondent is a person as defined at 40 C.F.R. § 761.3.

10. The inspector documented that Respondent stores PCB waste generated by others.

11. Respondent does not have a final approval to engage in commercial storage of PCBs.

12. Therefore, Respondent is a commercial storer of PCB waste, but is prohibited from storing greater than 500 gallons of PCB contaminated waste generated by others pursuant to 40 C.F.R. § 761.3 and 40 C.F.R. § 761.65(d).

13. During the inspection, the inspector collected a copy of a Uniform Waste Manifest, document number 20159, showing that 19,775 kilograms (approximately 5,400 gallons) bulk MODEF (Mineral Oil DiElectric Fluid) containing PCBs at concentrations of greater than 50 parts per million (ppm) and less than 500 ppm PCB was shipped by Respondent for disposal on August 23, 2002.

14. Respondent failed to comply with the requirements of 40 C.F.R. § 761.65 (d)(2), promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and therefore violated Section 15 of TSCA, 15 U.S.C. § 2614 (1).

15. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and based on the facts stated in paragraphs 10 through 14 above, it is proposed that a civil penalty of Twenty-Seven Thousand Five Hundred Dollars (\$27,500) be assessed against Respondent.

Count II

16. Paragraphs 9 through 12 are hereby incorporated by reference.

17. During the inspection, the inspector collected a copy of a Uniform Waste Manifest, document number 20156, showing that 19,775 kilograms (approximately 5,400 gallons) bulk MODEF (Mineral Oil DiElectric Fluid) containing PCBs at concentrations of greater than 50 parts per million (ppm) and less than 500 ppm PCB was shipped by Respondent for disposal on August 14, 2002.

18. Respondent failed to comply with the requirements of 40 C.F.R. § 761.65 (d)(2), promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and therefore violated Section 15 of TSCA, 15 U.S.C. § 2614 (1).

19. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and based on the facts stated in paragraphs 16 through 18 above, it is proposed that a civil penalty of Twenty-Seven Thousand Five Hundred Dollars (\$27,500) be assessed against Respondent.

Section IV

Relief

20. Section 16(a) of TSCA, 15 U.S.C. § 2615 authorizes a civil penalty of up to \$25,000 per day for each violation of Section 15(1) of TSCA. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, mandated by the Debt Collection Improvement Act of 1996 (31 U.S.C. Chapter 37) requires a 10% upward adjustment to all civil monetary penalties for violations that occur after January 30, 1997. The penalties proposed in paragraphs 15 and 19 above are based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-referenced violations in accordance with EPA's Polychlorinated Biphenyls (PCB) Penalty Policy, 55 Fed. Reg. 13955 (copy enclosed), the Civil Monetary Penalty Inflation Adjustment Rule, as well as Respondent's history of prior violations, if any, and degree of culpability. A summary of the proposed penalty is contained in the enclosed PCB Civil Penalty Calculation Summary attached hereto and incorporated herein by this reference.

21. The proposed penalty set forth above is based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty

22. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty - \$55,000 - may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

EPA - Region 7
ATTN: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

Checks should reference the name and docket number of the Complaint which appear on the face of this Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Section V

Answer and Request for Hearing

23. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

24. Any Respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an Answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule, 40 C.F.R. Part 22 (Consolidated Rules). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject the Respondent to default.

25. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.

26. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

27. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101

28. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to: (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing; Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or TSCA.

Informal Settlement Conference

29. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

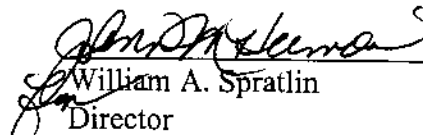
Julie M. Van Horn
Attorney, Office of Regional Council
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101
Telephone (913) 551-7889

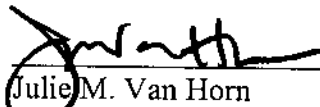
30. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

31. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

32. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date 6/11/03


William A. Spratlin
Director
Air, RCRA, and Toxics Division


Julie M. Van Horn
Attorney
Office of Regional Counsel

Enclosures: PCB Civil Penalty Calculation Summary
Polychlorinated Biphenyls (PCB) Penalty Policy (April 9, 1990)
Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule, 40 C.F.R. Part 22

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule, 40 C.F.R. Part 22; and a copy of the April 9, 1990, Polychlorinated Biphenyls (PCB) Penalty Policy to the following:

Joseph Hemmer
Solomon Corporation
103 West Main
Solomon, Kansas

6/12/03

Date

Carol Sharp for
Victoria Matthews